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Notice of Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*,
CG Docket No. 17-59

Dear Ms. Dortch:

Sirius XM Radio Inc. ("SiriusXM"), by its undersigned counsel, files this ex parte letter to encourage the Commission to take near-term action to address certain ongoing practices by various parties – including carriers and providers of apps used by carriers and consumers – that impede legitimate businesses like SiriusXM from using the Public Switched Telephone Network ("PSTN") to reach their customers. In its November 2017 Further Notice of Proposed Rulemaking in this proceeding, the Commission requested comment on what additional actions it should take to protect legitimate callers from the current problem of overblocking.¹ The time is ripe for such additional action.

SiriusXM supports the Commission's efforts to combat illegal robocalling, including its recent initiatives to prevent spoofing and other serious abuses, as well as its ongoing enforcement efforts against the worst actors. Such calls not only harm consumers and interrupt them in the privacy of their homes, but also undermine consumers' reliance on the PSTN, leading them to question the validity of calls they receive and making them less likely even to answer their phones. Many commenters, however, have observed that business calling well outside the scope of spoofed, scam, or otherwise illegal telemarketing calls are now routinely

¹ *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706 (2017), ¶¶ 57-59 ("2017 Robocall Order") (citations omitted).

being impeded by voice service and call blocking/labeling providers. While SiriusXM is participating in industry efforts to resolve this problem, it is becoming increasingly clear that these efforts, while constructive, have been unsuccessful in resolving the immediate business challenges posed by overblocking and mislabeling of legitimate business phone calls. SiriusXM therefore urges the Commission to safeguard the utility of the PSTN by taking near-term action as detailed herein to curb the worst blocking and mislabeling practices carried out by telecom and app providers.

A. The FCC Should Provide Near-Term Guidance to the Industry

SiriusXM has been working with interested industry parties – including participating in the Robocall Strike Force – and has continued its efforts to address overblocking and mislabeling of legitimate calls through meetings with multiple stakeholders including FCC and FTC staff, other lawful originating callers, telecom carriers (including wireline, wireless, and VoIP providers), call blocking and labeling app providers, and data analytic companies. While the meeting participants have made good faith efforts to address these concerns and have plans for more meetings, the slow progress, coupled with the severity and impact of the problem, require that the Commission oversee and guide these industry efforts through its own actions. Industry groups continue to talk about possible avenues to rein in excessive call blocking and labeling, but these industry fora have not yet resulted in specific relief or even a clear path forward.

SiriusXM and other legitimate call originators find that the PSTN is being choked off with no near-term solutions in sight. The Commission recognized that the *2017 Robocall Order* was only a first step towards the solution and invited comment in the accompanying FNPRM on specific Commission action to curb the widespread blocking of legitimate calls.²

² *Id.* As Commissioner O’Rielly detailed in his separate statement, “I have heard concerns that blocking is increasingly capturing what I call ‘false positives.’ That is, certain calls from legitimate businesses offering legal products and services to willing and authorized consumers are also being blocked. Moreover, companies have reported that it can be difficult and time consuming to dispute and remove inappropriate blocks The item as circulated encouraged providers to work with companies to resolve disputes, and I am sure that most providers are working in good faith to address any problems that arise. After all, as the order makes clear, it is a violation of federal law to block legitimate calls. Nonetheless, the record and experiences to date have shown that it is already happening so having a clear process in place would strike a better balance of providing certainty and avoiding the need for businesses to file complaints with the FCC.” Statement of Comm’r Michael O’Rielly, *2017 Robocall Order* (“O’Rielly Statement”).

We therefore urge the Commission to establish some basic guardrails now, while also signaling that if the industry does not take corrective action in the near-term and overly zealous blocking continues, the Commission will take further action. One action proposed in this docket that would represent a significant step forward is the implementation of a list of numbers that are assigned to legitimate callers whose calls could not be blocked or labeled absent definitive evidence of illegal use of those numbers.³

The Commission should require a coalition with representation from a cross section of the affected parties – including carriers, call originators, and consumers – to develop, within the next six months, a registration process where good actors can “register” originating numbers to ensure that legitimate commercial or public service calls are not inadvertently lumped in with the bad ones. There must also be a process requiring notification and input from the originating caller before any number can be removed from that database. The requirement to complete such calls should apply to all providers – carriers and non-carriers alike – that block phone calls in order to protect fully the integrity of the PSTN.⁴ In this proceeding, the Commission has already

³ We recognize the term “white list” might be inappropriate for this tool, since the list would not be immutable and numbers might need to be deleted from the list from time to time if they are spoofed or become the source of illegal calling. Regardless of the name, the important thing is to establish a database that will protect lawful callers from having their calls blocked and mislabeled. A wide variety of commenters in this proceeding, including SiriusXM, have urged the Commission to adopt this sort of mechanism, often calling it a “white list.” See SiriusXM Comments at 9 (Jan. 23, 2018); RESA Comments at 9 (Jan. 23, 2018); CPL Comments at 9-10 (Jan. 23, 2018); Comments of Encore Capital Group, Inc. at 2 (Jan. 23, 2018); Reply Comments of Insights Association, at 5 (July 31, 2017); Tele-Town Hall Comments, at 6 (July 5, 2017). A few parties have argued against creating such a list because it could be abused. See Comments of FTC Staff, at 5 (Jan. 23, 2018). This is a matter of database security, an issue that can easily be addressed and resolved with any database. The fact that problematic numbers could periodically be removed from the database also alleviates the problems potentially posed by such abuse. But this possibility of abuse cannot justify failing to develop a registry of numbers that are the source of presumptively legitimate originating calls.

⁴ The Commission can resolve any questions about its jurisdiction over non-carriers’ activities by, for example, prohibiting carriers from working with any labeling, blocking, or analytics provider that does not abide by the Commission’s rules and directives. This would be consistent with the Commission’s recent adoption of a registration mechanism applicable to non-carrier intermediate providers in the context of rural call completion and the Commission could adopt similar mechanisms here if non-carriers continue to be the source of overblocking and mislabeling on the PSTN. *In the Matter of Rural Call Completion*, Second Report and Order and Third Further Notice of Proposed Rulemaking, WC Docket No. 13-39, FCC 18-45 ¶¶ 69-71 (rel. Apr. 17, 2018). Similarly, the Commission could affirm that it has jurisdiction over non-carriers that market apps and other software intended for use with the PSTN in much the same way that it asserts jurisdiction over other non-carriers such as providers of cellphone jammers and other equipment meant to connect to or interfere with the PSTN. See, e.g., *Jammer Enforcement*, <https://www.fcc.gov/general/jammer-enforcement> (last visited June 7, 2018) (“Federal law prohibits the operation, marketing, or sale of any type of jamming equipment, including devices that interfere with [cellular, PCS, police radar, GPS, and Wi-Fi services]”); see generally 47 C.F.R. Part 68

emphasized the importance of ensuring that all providers facilitate the completion of legitimate calls:

The Commission's Consumer Advisory Committee similarly states that providers and consumers should "work collaboratively to develop processes and solutions whereby unintended blocking of legitimate callers can be remedied in a timely and efficient manner." We encourage providers who block calls to establish a means for a caller whose number is blocked to contact the provider and remedy the problem. Specifically, we encourage providers that block calls in accordance with these rules to provide a way for subscribers to challenge a blocked number using a simple method that is easy for the average subscriber to understand. We also encourage providers to quickly resolve the matter so subscribers making legitimate calls may resume doing so speedily.⁵

While we are aware of some industry discussion about creating such a list, there has been only very limited movement towards developing a centralized, independent, and protected registry. The Commission should require that a report be filed with the Chairman by September 1, 2018, led by industry groups representing various constituencies such as USTelecom, CTIA, and originating caller representatives (e.g., PACE), detailing progress toward the implementation of a database registry mechanism. The report should include specific recommendations and a firm timeline for implementation, which must occur by March 1, 2019. *See* further discussion below. Requiring this report would provide an impetus for all parties to work together expeditiously towards a registry solution, and bring its near-term development squarely within the oversight of the Commission.

B. While Industry Continues Its Discussions, the Commission Should Take Concrete First Steps

In the spirit of parallel industry and Commission efforts, while SiriusXM and all other interested parties continue to discuss these issues, the Commission should take the following first steps to guide resolution of the urgent problem of overblocking and mislabeling. The following are recommendations for the Commission to address some "low hanging fruit" issues to curb the current call blocking and mislabeling chaos in the near term. These recommendations are not intended to preclude further action if legitimate calls continue to be blocked and mislabeled and industry meetings do not lead to comprehensive solutions.

"Connection of Terminal Equipment to the Telephone Network"; 47 C.F.R. § 68.1 ("The purpose of the rules and regulations in this part is to provide for uniform standards for the protection of the telephone network from harms caused by the connection of terminal equipment and associated wiring thereto . . .").

⁵ 2017 *Robocall Order*, ¶ 54 (citations omitted).

SiriusXM recommends the Commission take the following actions at this time:

1. Require that any voice service provider and any blocking or labeling provider contracting with a carrier must provide and publicize a single point of contact for companies whose calls are being improperly blocked. This could be accomplished through a web page as several parties have recommended⁶ (provided that a responsible individual's name and contact information is displayed on the page) or a dedicated and responsive telephone and email point of contact. Despite the *2017 Robocall Order*'s requiring a "simple method" to have calls unblocked,⁷ SiriusXM is aware of only limited efforts by carriers and call blocking providers to comply with the Commission's directive. One major carrier publicizes such a number, but in fact it turns out to be a general customer service number rather than a person dedicated to and capable of promptly investigating and resolving overblocking and mislabeling concerns; this is inadequate.
2. Reemphasize that those same providers should be required to unblock or stop labeling within a reasonably short period of time, not to exceed three (3) business days from the initial contact. The Commission has said providers should "quickly resolve" such requests but there is a need for greater specificity. Moreover, the Commission should clarify that such requirements apply to any entity blocking or labeling calls on the PSTN, including app providers.⁸ If an originating party can demonstrate that its calls are not robocalls (*e.g.*, calls to a landline that are not made with a prerecorded voice) or calls otherwise specifically precluded by law,⁹ such relief should be prompt.
3. Require expedited action as to certain categories of customers, including calls from companies that can demonstrate by affidavit that their calls have been requested or are expected by the called party.¹⁰ In addition, the Commission should provide a

⁶ See, *e.g.*, Ex Parte Letter from Andrew D. Lipman, Counsel to Securus Technologies, Inc., to Marlene H. Dortch, CG Docket No. 17-59, at 2-3 (citing comments of Incompas, American Bankers Association and Comcast comments supporting flexible, web-based portals).

⁷ *2017 Robocall Order*, ¶ 54.

⁸ See Note 4, *supra*.

⁹ The Commission permits call blocking by voice service providers in certain "well-defined circumstances," specifically allowing providers to block calls from phone numbers on a Do-Not-Originate (DNO) list and those that purport to be from invalid, unallocated, or unused numbers. *2017 Robocall Order*, ¶¶ 1, 9.

¹⁰ While the Commission recognizes that "consumers who choose to use such [call blocking] technology to stop unwanted robocalls" should be able to do so (*In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 30 FCC Rcd 7961 (2015), ¶ 152), the Commission should now clarify that if a call originator can demonstrate that calls were requested or otherwise

blanket exemption for school systems, medical institutions, banks, and other similar categories of lawful callers whose public benefits are clear.¹¹

4. Clarify that deliberately providing a caller with false information about why a call is not completing is fraudulent and illegal, whether conducted by carriers or non-carriers. For example, some app providers have publicly stated that they routinely and deliberately transmit recorded messages informing callers that dialed numbers have been disconnected when they know that is not the case, simply to dissuade future calling to that number. No company should be permitted to distort the PSTN and pollute the calling ecosystem with such patently false messages. Using its authority to act against non-carriers,¹² the Commission should require registration by all call blocking and labeling providers and impose minimum commitments on such providers to comply with the Communications Act and the Commission's Rules (including requiring single point of contact, prompt unblocking, and not sending patently false carrier-type messages across the PSTN).¹³
5. As detailed above, require the industry to report to the Chairman by September 1, 2018 on how it could implement a safe caller registration list and how such a list could be insulated from data breaches, with a firm implementation date of March 1, 2019.
6. Require the industry to report to the Commission by October 1, 2018 on a firm timeline to implement a unique signal indicating that a call is being blocked, transmitting sufficient information back to the originating caller to identify the blocking provider so that action can be taken if needed to correct mistaken blocking.
7. Require Caller ID (namely, the caller's name and telephone number), when available, to be displayed before any other label and require wireless providers to increase the universal availability of Caller ID on wireless handsets.

authorized by end users, such calls should not be unduly lumped in with the "unwanted" calls that the Commission originally intended to permit be blocked.

¹¹ See *O'Rielly Statement* ("[R]eal people will be hurt, be inconvenienced, or lose opportunities from overaggressive call blocking mechanisms. Consider the cases of legal robocalls the Commission has already exempted from our rules, such as pharmacies providing prescription notifications, schools contacting parents or guardians when children are missing, or energy companies alerting the community that a catastrophe has subsided.").

¹² See Note 4, *supra*.

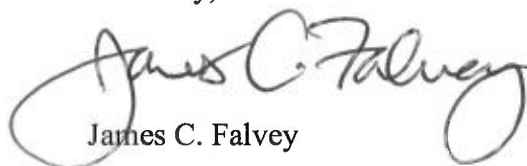
¹³ The Commission has previously adopted rules to address other forms of false signaling, including requiring calling party number in the context of rural call completion and prohibiting false audible ringing. See 47 C.F.R. § 64.1601(a), 47 C.F.R. § 64.2201. The Commission, in a recent well-publicized case, fined T-Mobile \$40 million for violating its false audible ringing rules. *In the Matter of T-Mobile USA, Inc.*, Order, EB-IHD-16-00023247 (rel. Apr. 16, 2018).

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These measures are critical to ensure the PSTN continues to be useful for consumers and call originators alike. Although complaints and enforcement serve an essential role, the Commission cannot and should not rely solely on individual complaints to eliminate overblocking and mislabeling on the PSTN. The Commission has the authority it needs to assert jurisdiction over the parties that provide the most obstructive services. The measures proposed herein would ensure that call originators like SiriusXM have the information they need to determine what entity is blocking their calls in the first instance. A company cannot resolve the overblocking if it will be mired down in matters of proof relating to tracking the blocking and labeling of potentially millions of individual calls. Broader measures are called for as detailed above and should now be implemented by the Commission.

As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,



James C. Falvey

cc: Mark Stone
Kurt Schroeder
Karen Schroeder
Jerusha Burnett
Micah Caldwell
Richard Smith